Supreme Court, U.S.
FILED
OCT 15 1991
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No. 91-493

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

LEE H . RICE and GOLDIE E. RICE, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL APPENDIX

LEE H. RICE
GOLDIE E. RICE

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Circuit Judges Norris,
Beezer, and Brunetti,
filed April 15, 1991 3

NOTE: Pages missing from above MEMORANDUM in APPENDIX previously submitted are labeled App. 5-A herein.

F I L E D
APR 15 1991

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	) No. 90-16329
Plaintiff-Appellee,	) D.C. No. CV-2330-PHX-RG
v.	)
LEE H. RICE, and GOLDIE E. RICE,	) **MEMORANDUM****
Defendants-Appellants.	)

Appeal from the United States District Court for the District of Arizona
Roger G. Strand, District Judge, Presiding

Submitted March 18, 1991**

BEFORE: NORRIS, BEEZER, and BRUNETTI, Circuit Judges

In 1988, the District Court of Arizona entered a judgment upholding a

decision of the Interior Board of Land Appeals, declaring defendants' ten unpatented mining claims to be invalid, directing the defendants to vacate the claims, and awarding damages to the United States. On appeal, this court affirmed the district court's finding as to the invalidity of the claims, but reversed and remanded the issue of damages. On remand, the district court recalculated damages and again entered judgment in favor of the United States. Defendants filed a timely appeal.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); Circuit Rule 34-4.

In our earlier decision, we held that "the United States is entitled to recover the reasonable value of past rent for the use of land in the case of trespass," and "is also entitled to recover prejudgment interest . . . and the reasonable costs of removing structures and restoring the land to its natural state." United States v. Rice, No. 88-2550, Memorandum Disposition at 16 (9/15/89) (citations omitted). We further held that applicable statute of limitations limited "the government's damages to six years prior to the commencement of the second action, that is, to December 13, 1978." Id. at 17.

On remand, the district court awarded damages in the total amount of $7,091.15. Of this amount, $2,212.23 represented the defendants' liability

to the United States for the reasonable costs of removal and restoration, and $4,878.92 represented the reasonable value of the defendants' use and occupancy of the land "from January 1, 1978 through 1986."

It was error for the district court to award damages for the period from January 1, 1978 through December 13, 1978. The District court assessed damages in the amount of $307.94 for this period.

However, because the district court did not award damages in favor of the United States for the defendants' use of the land for the years 1987 through 1990, any error in the district court's calculation of defendants' liability was harmless.

AFFIRMED.